Accountable Government

A Guide for Ministers

2006

Canada

ACCOUNTABLE GOVERNMENT

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Accountable Government: A Guide for Ministers sets out core principles regarding the role and responsibilities of Ministers in Canada's system of responsible parliamentary government. This includes the central tenet of ministerial responsibility, both individual and collective, as well as Ministers' relations with the Prime Minister and Cabinet, their portfolios, and Parliament. It outlines standards of conduct expected of Ministers as well as addressing a range of administrative, procedural and institutional matters. On the critical issue of ethical conduct, Ministers should ensure that they are thoroughly familiar with the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

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PRIME MINISTER • PREMIER MINISTRE

A Message to Ministers

Canadians have entrusted our government with ensuring that the institutions and individuals by whom they are governed are fully accountable for the policies they adopt and the actions they take. This means that we must uphold the highest standards of probity and ethical conduct. But it also entails a transformation in the culture of government to reflect the evolving expectations of Canadians. If Canadians are to have confidence in their political institutions and representatives, and be truly engaged in the nation's political life, government must recognize that accountability is not a concession it makes or a set of technical rules to be complied with, but rather the very essence of its role as an instrument by which Canadians govern themselves.

In Canada's system of government, the principles of accountability have no greater expression than in Parliament, whose foremost task is to hold government to account. A Minister's central consideration must therefore be his or her responsibility and accountability to Parliament, demonstrated through respect and support for the parliamentary process.

As Ministers, you are expected to strengthen the effectiveness of Parliament through close attention to your parliamentary duties. Your participation in Parliament must be characterized by constructiveness and the utmost integrity in order to earn the cooperation of your colleagues and the respect of all Canadians.

A further goal of our government, one that will also strengthen transparency and accountability to Parliament, is to streamline and simplify the executive, beginning with the Ministry. We will have a smaller Cabinet, in which all members are equal. All members of the Ministry will be members of Cabinet and have full ministerial status. Parliamentary Secretaries will focus on their parliamentary responsibilities and will not be members of the Queen's Privy Council for Canada. Further, we have strengthened

the *Conflict of Interest and Post-Employment Code for Public Office Holders*. We have also strengthened this Guide, for example, by providing greater detail and clarity on the relationship between exempt staff and public servants, and on ministerial responsibility for non-departmental organizations in a Minister's portfolio.

Accountable Government: A Guide for Ministers sets out the fundamental principles of our system of responsible government, with its core tenet of ministerial responsibility, and provides practical guidance for the conduct of your official duties. The conduct of Ministers should be characterized by the following principles:

- Ministers must act with integrity. To ensure public trust and confidence, not only in our government but in government generally, Ministers must uphold the highest standards of honesty and impartiality. Both the performance of your official duties and the arrangement of your private affairs should bear the closest public scrutiny.

- Ministers are responsible for ensuring that their departments are managed soundly and with complete integrity. They must discharge their portfolio responsibilities with careful regard to the particular powers, duties and functions assigned to them by statute and convention.

- Ministers are accountable to Parliament for the use of all powers vested in them. This demands constant attention to their parliamentary duties, including being present in Parliament to answer honestly and accurately about their areas of responsibility, and taking corrective action, as appropriate and within their authority, to address any problems that may arise within their portfolios. Should Ministers make any inadvertent error in answering to Parliament, they must take steps to correct it at the earliest opportunity.

- Ministers are bound by their oath as Privy Councillors. This oath reflects parliamentary government's core convention of Cabinet solidarity, by which Ministers share collective responsibility for the actions of government and speak to Parliament and Canadians with a single voice.

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This requires frank discussion in Cabinet and confidentiality in Cabinet decision making.

- Ministers must respect the non-partisanship of the Public Service of Canada and not seek to engage public servants in work that is outside their appropriate role. In this way, successive governments can have confidence that the Public Service will provide the support they need to fulfill their ministerial functions and mandate without regard to political partisanship.

This Guide will serve as an important reference as we work to promote a culture of accountability in everything we do. You will also have other important sources of support, including your deputy ministers. In the final analysis, however, no document or rules can supplant the need to approach your responsibilities with the utmost judgment and accountability.

Stephen Harper
Prime Minister of Canada

Introduction

This Guide sets out the duties and responsibilities of the Prime Minister and of Ministers and outlines key principles of responsible government in Canada. This essential information will help members of the Ministry individually and collectively support the Prime Minister in managing the business of the Government of Canada. The Guide also covers the duties and responsibilities of Parliamentary Secretaries.

Ministers who want further information or advice about the subject matters of this document may consult the Clerk of the Privy Council or their deputy minister. This document has been prepared by the Machinery of Government Secretariat in the Privy Council Office, which is responsible for supporting the Clerk of the Privy Council and deputy ministers by advising them on matters contained in this Guide.

I

Ministerial Responsibility and Accountability

Ministers of the Crown are chosen by the Prime Minister, who may ask for their resignation at any time. The Ministry together helps carry out the mandate of the government. Government policy is established by the Cabinet, which includes all members of the Ministry.

Ministers of the Crown are responsible and accountable to the Prime Minister and Parliament in two fundamental ways:

- Individually, for their performance in carrying out the responsibilities of the portfolio assigned to them by the Prime Minister.

- Collectively, in support of the Cabinet team and its decisions.

Ministers' individual and collective responsibility is an essential principle guiding the rule of Cabinet government in Canada, and is at the core of the standards for ministerial behaviour.[1]

I.1. Individual Ministerial Responsibility

Parliament confers power on a Minister through parliamentary statutes that set out the duties and functions for which the Minister is individually responsible. In addition to these enabling statutes, there are "unwritten" conventions or precedents governing the ways in which Ministers fulfill their responsibilities and account for their actions in exercising their statutory authority.

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[1] Details may be found in *Responsibility in the Constitution*, Privy Council Office, 1993.

In addition to statutory powers conferred on them by Parliament, Ministers may also have other responsibilities assigned to them by the Prime Minister. Ministers are accountable to Parliament for the exercise of their responsibilities whether they are assigned by statute or otherwise.

I.2. Collective Ministerial Responsibility

All members of the Ministry are collectively responsible for carrying out the government's policies as established by the Cabinet. They are therefore expected to work in close consultation with their ministerial colleagues. This principle is the foundation of a key unwritten constitutional convention known as Cabinet solidarity. Coordinated and consistent communication with Parliament and the public is another essential requirement of Cabinet government.

Policies presented to Parliament and to the public must be the agreed policies of the Cabinet. Ministers cannot dissociate themselves from or repudiate the decisions of their Cabinet colleagues unless they resign from the Cabinet.

Cabinet solidarity is further reinforced by the Privy Councillor's oath requiring Ministers to declare their opinion as decisions are being made, and to strictly uphold the confidentiality of Cabinet decision making.

Ministers also make decisions collectively for practical reasons. In working toward achieving government objectives, ministerial responsibilities may overlap or have implications for other Ministers. The increasing complexity of issues means that, if the government's objectives are to be achieved, policies and programs must be reviewed in relation to each other. Ministers also have responsibilities for representing the different perspectives and interests of their regions, and these inevitably cut across the departmental division of government activities.

Ministers also share two limited assets: parliamentary time and financial resources of the Consolidated Revenue Fund. Only a relatively small number of major initiatives can be handled at one time. Thus, the government's overall policy agenda necessarily impinges on the portfolio goals of individual Ministers. Ministers therefore need to work closely together to ensure their goals are considered in the broader objectives of the government's agenda.

I.3. Ministerial Accountability and Answerability

In providing good government for the people of Canada, Ministers are responsible and *accountable to Parliament* for the use of the powers vested in them by statute or otherwise. Ministers must be present in Parliament to respond to questions on the use of those powers, as well as to accept responsibility and account for that use. Whether a Minister has used the powers appropriately is a matter of political judgment by Parliament. The Prime Minister has the prerogative to evaluate the consequences and to reaffirm support for that Minister or to ask for his or her resignation.

Ministers are also required to *answer to Parliament* by providing information to Parliament on the use of powers by bodies that report to Parliament through them. In providing the information, Ministers must take into account all implications, including the lawful protection of privacy and the Minister's statutory authority over the organization. The Public Service supports Ministers by providing information that assists them in answering to Parliament.

II

Portfolio Responsibilities and Support

In appointing a Minister to a portfolio, the Prime Minister may assign a broad range of responsibilities, from their immediate departmental powers, duties and functions to other special assignments or roles. In exercising the powers conferred by Parliament and in implementing Cabinet decisions, Ministers are supported by a deputy minister and departmental officials. They are also provided with resources for exempt staff,[2] whom they personally appoint to assist them in constituency and political work.

Given his role as head of government, the Prime Minister has a responsibility for the effective operation of the whole of government and often has to answer in the House for the operation of all departments and agencies. This may mean that, in carrying out this overarching responsibility, the Prime Minister will be involved in matters within the responsibility of individual Ministers.

This chapter provides information on the framework and management of ministerial portfolios and on the Public Service resources that provide support to Ministers.

II.1. Powers, Duties and Functions

Departmental *powers, duties and functions* are vested in Ministers through statute. Many of these powers are normally delegated to deputy ministers and departmental officials, who act on their behalf. Ministers are individually responsible to Parliament and the Prime Minister for their own actions and those of their department, including the actions of all officials under their management and direction, whether or not the Ministers had prior knowledge. In practice, when errors or wrongdoing is committed by officials under their direction, Ministers are

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[2] See Chapter VI, section 1 regarding exempt staff.

responsible for promptly taking the necessary remedial steps and for providing assurances to Parliament that appropriate corrective action has been taken to prevent reoccurrence.

Ministers' responsibilities may include a variety of non-departmental bodies such as Crown corporations or tribunals. In accordance with the enabling legislation, Ministers exercise varying degrees of control and responsibility for the agencies that are part of their portfolio.

The Prime Minister may assign additional responsibilities to a Minister, either through an Order in Council[3] or as a result of a designation by the Prime Minister (for example, political regional responsibilities). Consequently, ministerial responsibilities can encompass a range of diverse activities, some based on statute, others on specific direction provided by the Prime Minister.

II.2. Integrated Portfolio Management

Quality programs and services in keeping with the government's objectives depend strongly upon Ministers' ability to manage their respective portfolios in an integrated way. Portfolios are organized to bring together bodies that share common purposes. Ministers must ensure that all actors and organizations within the portfolio work together in a coherent fashion, while respecting any necessary degrees of independence.

In certain instances, the Prime Minister may appoint a Minister to additional duties in the portfolio of another Minister. In such cases, the portfolio Minister is accountable for the entire portfolio, and any arrangements made with respect to portfolio management must fully respect any statutory responsibilities and accountabilities vested in Ministers. One or more Parliamentary Secretaries may also be appointed to assist the Minister or Ministers in the portfolio. These Ministers and Parliamentary Secretaries must all work together to ensure coordinated and integrated functioning of the portfolio.

The portfolio, the actors in it and its organizations should function as a team. Portfolios are varied, and the organizational bodies can include:

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[3] See Annex B, section 5 regarding Orders in Council.

- a department that has a role in shaping future policies and laws, and, in some cases, delivering services;

- service agencies that provide services within the government's policy and legislative framework and on the basis of a Business Plan;

- administrative tribunals that make decisions and hear appeals at arm's length from the government and on an independent basis; and

- Crown corporations that provide specific services on a commercial basis.

Each organization is different. They all have different mandates, a variety of organizational structures, and a different relationship to the Minister that reflects their purpose. However, they all provide services to Canadians and report to Ministers, or through Ministers to Parliament.

Building on existing statutory roles under a Minister's authority and his or her leadership role as assigned by the Prime Minister, the goal of integrated portfolio management is to ensure all actors and organizations work together in the most effective fashion. The Minister must captain the portfolio in order to achieve good governance, coherent coordination of policy, legislation and programs, excellence in delivery of programs and services, and meaningful accountability to the public, through Parliament, for the activities of the full portfolio.

The deputy minister, as the Minister's principal source of Public Service support and policy advice, will be expected to advise the Minister on all matters under the Minister's responsibility and authority. He or she will have a key role in promoting appropriate policy coordination, and building coherence in the activities and reporting of the portfolio bodies. Deputies can provide advice to Ministers on the appropriate means to ensure integration in the undertakings of their portfolio, while respecting any accountability requirements and mandates set out by legislation. Depending on the portfolio, the deputy may also be assigned certain specific responsibilities by the Minister. In those cases, it is important that the Minister provide clear guidance to all agency heads on his or her expectation of the portfolio integration role of the deputy.

Agency and Crown corporation heads—while maintaining the necessary arm's-length relationship and managerial autonomy required for their bodies—should seek out opportunities to contribute to the overall functioning of the portfolio. Ministers need to make sure that the perspectives of these bodies are brought to bear in the policy development process within the portfolio.

II.3. Equality of Ministers and Duties Across Portfolios

All members of the Ministry are members of Cabinet and have full ministerial status. In certain instances, the Prime Minister may appoint a Minister to additional duties in the portfolio of another Minister, and in such cases the portfolio Minister is accountable for the entire portfolio.

II.4. Parliamentary Secretaries

Parliamentary Secretaries are chosen by the Prime Minister, and are assigned to assist Ministers. They are key resources in a Minister's portfolio, and full participants in the government's work. Parliamentary Secretaries receive a mandate letter from the Prime Minister, and their responsibilities are carried out within the policy and program frameworks set out by their Minister. They may also be called upon to support other Ministers in the portfolio.

Parliamentary Secretaries are expected generally to support a Minister with respect to House and public duties as well as department-related duties, as discussed below:

House and Public Duties

- Parliamentary Secretaries are a fundamental link between Ministers and Parliament. They help Ministers maintain contacts with Senators and other members of the House of Commons in order to promote effective parliamentary decision making and to assist in the development of the legislative agenda. They play a necessary liaison role within the caucus and throughout the House of Commons and its committees. In committees, they help in sharing departmental information, and can work with committee chairs to plan appearances of Ministers and departmental officials to ensure

productive dialogue. They are expected to facilitate departmental appearances by representing the Minister's views and addressing political issues which may arise. On Private Members' business, Parliamentary Secretaries are a link between the caucus and the Minister, and can also facilitate interaction with departments in the development of Private Members' business which the government chooses to support. Parliamentary Secretaries may also be called upon to answer policy questions during Question Period in the Minister's absence, although acting Ministers may respond to particularly sensitive questions. Given that they work under the direction of a Minister, Parliamentary Secretaries do not introduce their own Private Member's bills or motions.

Department-Related Duties

- Parliamentary Secretaries may have specific policy-related priorities to pursue, as set out in a mandate letter from the Prime Minister, and are expected to be engaged as key players in making strategic contributions to policy development. A Minister may delegate to a Parliamentary Secretary specific duties for policy development initiatives. Overall responsibility and accountability remains with the Minister, who also remains responsible for the direction of public servants and departmental resources, and authority to initiate departmental actions. Parliamentary Secretaries must also assist in ensuring liaison between parliamentary committees and the Public Service.

Parliamentary Secretaries are subject to the *Conflict of Interest and Post-Employment Code for Public Office Holders.* Further information on the Code can be obtained from the Ethics Commissioner or the Privy Council Office. They are also subject to the *Conflict of Interest Code for Members of the House of Commons* in their capacity as members of the House of Commons. Further information on the House Code can be obtained from the Ethics Commissioner.

II.5. Deputy Ministers

Deputy ministers are professional, non-partisan public servants. They are chosen and assigned by the Prime Minister on the advice of the Clerk of the Privy Council and are appointed by the Governor in Council.[4] Their role is to provide their Minister with the broadest possible expert advice and support needed for the Minister's portfolio responsibilities, and to undertake the day-to-day management of the department on behalf of their Minister. However, deputy ministers do not exercise direct authority over non-departmental bodies within the portfolio. Deputy ministers are required to manage a complex set of multiple accountabilities which arise out of various powers, authorities and responsibilities attached to the position.

Deputy ministers are responsible and accountable for a wide range of duties including policy advice, program delivery, internal departmental management, and interdepartmental coordination. In performing these duties, deputy ministers have a fundamental responsibility to support both the individual and collective responsibilities of their Minister. They are accountable on a day-to-day basis to their Minister, and a cooperative relationship between the two is critical. The advice that deputy ministers provide should be objective and must respect the law. If conflict occurs between the Minister's instructions and the law, the law prevails.

The Prime Minister is responsible for the unity and direction of the Ministry and the government's policies. As a result of their role in the collective management of the government, deputy ministers are also accountable to the Prime Minister for responding to the policies of the Ministry as a whole and to the requirements of the Treasury Board and the Public Service Commission. This includes ensuring that appropriate interdepartmental consultation occurs on any matter that may touch upon broader ministerial responsibilities. In this capacity, deputy ministers are required to keep the Clerk of the Privy Council informed of any matter they consider significant enough to affect their responsibilities or those of their Minister. If the issue is of sufficient concern, the Clerk of the Privy Council will inform the Prime Minister.

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[4] See Annex A, section 3 for a definition of Governor in Council.

Deputy ministers also carry a general obligation of accountability to the Treasury Board for the overall management capacity and performance of the department. In order to assist in managing this accountability, and to ensure performance is subject to regular review, deputy ministers are required to implement the Treasury Board Secretariat's Management Accountability Framework. The Comptroller General of Canada also sets reporting requirements on departmental spending, and deputy ministers and departmental comptrollers must ensure that all requirements for expenditure planning, control and oversight are met, including in the development of policy proposals.

Further details on the accountability and duties of deputy ministers are included in *Guidance for Deputy Ministers*, a companion to this Guide.

II.6. Departmental Officials

The department reports to the Minister through the deputy minister in a clear chain of command. Deputy ministers are chosen by the Prime Minister, whereas assistant deputy ministers, other executives and departmental officials are appointed according to conditions set out by the Public Service Commission. The accountability of departmental officials is to the Minister through the deputy minister, but it is the Minister who is accountable to Parliament.

Federal officials must work within the laws of Canada, and are expected to maintain the tradition of the political neutrality of the Public Service. This ensures their continuing ability to provide professional, candid and frank advice. In no circumstances should departmental officials be asked to participate in partisan political activities. The Treasury Board's *Values and Ethics Code for the Public Service* notes that Ministers are responsible for preserving public confidence in the integrity of management and operations within their departments, and for maintaining the tradition of political neutrality of the Public Service and its continuing ability to provide professional, candid and frank advice.

II.7. Non-Departmental Bodies

Most Ministers are responsible for several non-departmental bodies such as Crown or departmental corporations, agencies, commissions, tribunals or boards. A Minister's degree of control and responsibility for a non-departmental body is defined in the Act that establishes that body. While a Minister's

relationship with a non-departmental body is at arm's length, the Minister must still provide the organization with general guidance on the government's objectives and expectations. *Ministers need to know the details of their responsibilities, as well as the limits of their powers, for those bodies.* Deputy ministers can provide advice to Ministers on these issues, particularly in the context of integrated portfolio management.

The nature of the relationship between a Minister and an administrative tribunal with independent decision-making or quasi-judicial functions is a particularly sensitive issue. Ministers must not intervene in specific decisions of those bodies. Specific guidance governing Ministers' dealings with quasi-judicial tribunals is included in Annex E, as are guidelines on Crown corporations in Annex F.

Heads of non-departmental bodies are appointed by the Governor in Council, on the recommendation of the responsible Minister, after consultation with the Prime Minister. Their responsibilities and duties, and those of the designated Minister, vary with each governing statute. The responsible Minister is accountable for the overall effectiveness of Crown corporations in his or her portfolio, as opposed to their day-to-day operations. But while their degree of independence from the portfolio Minister may vary, all non-departmental bodies have a responsibility to answer to Parliament. Heads of non-departmental bodies and their officials appear before parliamentary committees and do so in accordance with the principles of ministerial responsibility and the political neutrality of public servants. Many non-departmental bodies are required to report annually to Parliament, through their designated Minister, on their performance and planning.

II.8. Acting Ministers

The Prime Minister establishes a standing roster of acting and alternate Ministers who assume additional duties when their colleagues are unable to perform their duties. The roster is formalized by an Order in Council. The Prime Minister can act for any Minister, but normally does so only when the designated acting Minister or the alternate Minister is not available.

Ministers acting on behalf of their colleagues may exercise the full powers of the Minister, but are advised not to make major decisions in the Minister's temporary absence. In urgent cases, they traditionally consult the Minister, the Prime Minister or other Cabinet colleagues as appropriate.

III

Ministerial Relations with Parliament

In our system of government, Parliament is the pre-eminent institution of democratic accountability. Clear ministerial accountability to Parliament is fundamental to responsible government,[5] and to ensuring that Canadians have confidence that their government is acting in an open, honest and transparent manner. A Parliament that makes real decisions requires parliamentarians who have and can use information and tools to promote the interests of the regions they live in, and to hold the government to account for its decisions. The Prime Minister expects Ministers to demonstrate respect and support for the parliamentary process. They should place a high priority on ensuring that Parliament and its committees are informed of departmental policy priorities, spending plans, and management challenges, including by appearing before parliamentary committees whenever appropriate. Ministers are expected to seek the views of parliamentarians and parliamentary committees on future plans and priorities, and to dedicate time to consulting and engaging their colleagues in Parliament in order to earn their support. These elements are key to bringing the public will and the purpose of a government into productive alignment.

Under the convention of responsible government, Parliament confers executive authority on Ministers on the condition that they, and through them the officials under their management and direction, be accountable to Parliament for their actions. Parliamentary review of spending is a key element of this accountability. A Minister's sphere of responsibility is generally set out in the statutes establishing the departments and organizations within a Minister's portfolio.

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[5] See Chapter 1 and Annex A for more information about responsible government.

III.1. Ministerial House Duties

The daily proceedings in the House of Commons are key to the government's effectiveness. Consequently, the Prime Minister expects Ministers to place a very high priority on their House duties. These duties include the following activities:

- *Daily attendance at Question Period.* Any proposed absences must be cleared with the Prime Minister's Office before other commitments are made. When a Minister is absent, a designated Minister or Parliamentary Secretary answers for him or her.

- *Attendance.* Attendance at other specified times is required according to a *mandatory schedule* of House duties prepared by the Leader of the Government in the House of Commons. Ministers are personally responsible for arranging replacements if they have to be absent and for notifying the Leader of the Government in the House of Commons and the Chief Government Whip of the arrangements.

- *Piloting legislation.* The Prime Minister expects Ministers to pilot their own legislation through the House and to appear before parliamentary committees of both Houses as required. The government will be pursuing its legislative agenda by requiring that government MPs vote with the government on matters of confidence, which include matters of fundamental importance to the government, including the Main and Supplementary Estimates, the Budget, and priority items in the government's agenda. On other matters, the government will take a position, and recommend a preferred outcome to the government caucus.

- *Private Members' business.* Under the Standing Orders of the House of Commons, all Private Members' Business items are votable. The government determines its position on all Private Members' items. If an item specifically opposes government policy, Ministers who are responsible for the policy should ensure that Members of Parliament, including caucus members, are

informed about the government's position, and should seek the support of caucus members for the government's position.

- *Committee relations.* The government will look to parliamentary committees to play an active role in policy and legislative issues, and Ministers should place a high priority on developing good relationships with parliamentary committee chairs and members, and supporting the essential work of the committee. This includes appearing before committees whenever appropriate.

- *Other House duties.* The Leader of the Government in the House of Commons assigns and coordinates other House duties to Ministers, such as attendance at votes and leading the government's response to Opposition Day motions.

The *Constitution Act, 1867* sets out the principles underlying the sovereignty of Parliament in the raising and spending of public money. Revenue can only be raised and moneys spent or borrowed by the government with the authority of Parliament. Regular, ongoing parliamentary spending reviews are part of ensuring that taxpayer dollars are aligned with the priorities set by Canadians, and that the government's management of the public purse is credible and avoids waste. Ministers must be prepared to respond to questions on spending for which they are responsible, and to regular parliamentary review of departmental expenditures.

Ministers' duties and relations with Parliament are very demanding and require significant support, particularly for Question Period and committee work. They require careful daily and long-term coordination with the Prime Minister and the government's Leaders in the Senate and the House. Ministers normally assign a senior member of their exempt staff to support their relations with Parliament. This person ensures ongoing liaison with the Whip's Office and the Office of the Leader of the Government in the House of Commons regarding House business, and acts as a key contact to obtain information from departmental staff for Question Period. Ministers who are assigned a Parliamentary Secretary are expected to make full use of this valuable resource to support them in the House of Commons and before parliamentary committees.

In the context of their accountability to the House of Commons, Ministers are required to answer parliamentary questions within their areas of authority as clearly and fully as possible. It is of paramount importance for Ministers to give accurate and truthful information to Parliament, and to correct any error at the earliest opportunity. Parliamentary questions cannot be directed to a former Minister concerning policies or transactions in a portfolio he or she no longer holds. However, current Ministers must account to the House for taking any corrective action required to address problems that may have occurred prior to their appointment.

Parliamentary accountability recognizes that only the person to whom responsibility and authority are assigned can take action. Ministers cannot be accountable for matters over which they have no authority. The statutes governing many non-departmental bodies such as regulatory commissions or tribunals may assign only limited ministerial responsibility for internal management and operations. In these cases, Ministers' accountability is limited, consistent with their direct responsibilities. Where Ministers do not have direct responsibility for addressing issues raised by Parliament, they must nevertheless answer to Parliament (i.e., provide the necessary information and explanations) and ensure that the non-departmental body concerned does address those issues, as appropriate.

III.2. Ministerial Senate Duties

The Leader of the Government in the Senate is responsible for managing the government's agenda in the Senate, and Ministers are expected to work with the Leader of the Government in the Senate on legislation and Private Members' bills for which they are responsible. In carrying out these duties, the Leader of the Government in the Senate is supported by political staff and the Privy Council Office. Ministers are responsible for ensuring that their legislation is piloted through the Senate and that questions related to their portfolio are answered in the Senate.

III.3. Parliamentary Committees and the Role of Departmental Officials

Appearances before House and Senate committees by Ministers and their officials are an essential part of informing Parliament, enabling parliamentarians to represent the views of

their constituents in the development of policy and legislation, and to hold the government to account for its management and policies. Ministers should promote an ongoing dialogue with parliamentary committees on their department's policy priorities, legislative and spending issues, and management challenges. Ministers, supported by the Public Service, should appear regularly before their respective parliamentary committee to seek the committee's input into policy and spending priorities, and to discuss departmental performance and results. Ministers are expected to provide, consistent with Treasury Board guidelines, informative and balanced reports to Parliament, most importantly the Estimates, the Report on Plans and Priorities, and Departmental Performance Reports. Ministers and their officials must cooperate with the committees in their work and seek the views of parliamentarians and committees on future plans and priorities.

The principles of ministerial accountability and responsibility guide Ministers and their officials appearing before parliamentary committees. Ministers are responsible for providing answers to Parliament on questions regarding the government's policies, programs and activities, and for providing as much information as possible about the use of powers assigned to them or delegated by them to others.

Ministers *are also responsible for deciding which questions* they should answer personally and which questions may be answered by officials speaking on their behalf. Officials can assist Ministers by factually answering questions at parliamentary committees, but they are to explain rather than defend or debate policies. When appearing before a parliamentary committee, officials maintain the traditional impartiality of the Public Service. The authoritative political presence of either the Minister or his or her political representative is required if politically controversial matters are likely to arise. As members of parliamentary committees, Parliamentary Secretaries are essential resources and play a key role by representing their Ministers before committees. Ministers should ask their Parliamentary Secretaries to address partisan issues raised during departmental appearances, and to act as a liaison between the committee and the Minister and the department.

Ministers should ensure that appearances by their officials before parliamentary committees are fully consistent with the ministerial responsibility assigned by Parliament in statute. Public

servants are ultimately accountable to Ministers and not directly to Parliament.[6] Consequently, departmental officials do not appear before committees without clear guidance from their Minister.

In appearing on behalf of their Minister before committees, departmental officials are often able to provide more detailed information on departmental plans and performance than Ministers can. The deputy minister and other officials must be prepared to describe in detail the plans, activities and performance of the department in areas such as financial management, program and service delivery, and human resources management.

Officials also have a duty and specific legal responsibility to hold in confidence information that may have come into their possession in the course of their duties. Therefore, when appearing before parliamentary committees, they are bound by these legal obligations, as well as an obligation to the Minister and to the government, not to disclose information that is confidential for reasons of national security or privacy, or because it consists of advice to Ministers. In practice, officials should endeavour to work with Members of Parliament, in cooperation with Ministers and their offices, to find ways to respond to legitimate requests for information from Members of Parliament, within the limitations placed on them. In the context of a committee hearing, information that is not in the public domain can only be made available on the specific authorization of the Minister, and within the context of statutory obligations.

Through their own initiative or in response to a request from a parliamentary caucus, Ministers can also inform Parliament by directing departmental officials to provide factual briefings to parliamentary caucuses. Briefings organized for one caucus are made available to other caucuses and, accordingly, House Leaders or Leaders of each party are kept informed of such briefings. It is never appropriate for the deputy minister or departmental officials to act in a partisan manner. Any questions of a political nature or expressions of disagreement with government policy should be referred to the Minister.

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[6] See *Notes on the Responsibilities of Public Servants in Relation to Parliamentary Committees*, available from the Privy Council Office.

IV

Consultation and Coordination

This chapter provides information on the roles of central agencies to support the Prime Minister and the work of the Cabinet. The Prime Minister expects Ministers and their departments to work closely with all central agencies to coordinate issues and to establish an overall program supported by the Cabinet.

IV.1. Central Agencies

a) Privy Council Office

The Privy Council Office provides the Prime Minister with Public Service support and directly assists the Prime Minister in performing all of his or her duties and responsibilities as head of government. It is also the Cabinet secretariat. Through ongoing consultation with departments and agencies, the Privy Council Office provides the Prime Minister with comprehensive information and analysis on contemplated policies and priorities. Specifically, it provides information on organization of the government and its relations with Parliament and the Crown, appointment of holders of senior offices, overall spending program of the government, functioning of the Cabinet decision-making system, development of major policies, management of intergovernmental relations and other specific issues.

The Privy Council Office also provides the necessary support to other Ministers in the Prime Minister's portfolio.

The Privy Council Office is headed by the Clerk of the Privy Council, whose role in the Government of Canada is combined with that of Secretary to the Cabinet. The Clerk is a non-partisan public servant selected by the Prime Minister. The Clerk of the Privy Council acts as the Prime Minister's deputy minister and is also the custodian of the records of the current and previous Ministries. In addition, this person is also Head of the Public Service, as designated by statute. In that capacity, he or she is responsible for the quality of expert, professional and non-partisan advice and service provided by the Public Service to the Prime Minister and the Cabinet. He or she reports annually to the Prime Minister on the state of the Public Service.

b) Department of Finance

The Department of Finance is responsible for the government's macro-economic policy, including tax policy and tax expenditures, as well as the overall fiscal framework, and for analysing the economic and fiscal impact of proposals by any Minister. The Department of Finance supports its Minister and maintains a broad socio-economic analytical capacity.

c) Treasury Board Secretariat

The Treasury Board Secretariat supports the President of the Treasury Board. As the administrative agency of the Treasury Board, the Secretariat supports the Board, which is a committee of the Queen's Privy Council for Canada, and assumes its legal responsibilities under the *Financial Administration Act* and other statutes. It has a central oversight role to play in government-wide management practices and ensuring value for money. The Comptroller General ensures improved financial management government-wide.

The Treasury Board Secretariat submits recommendations and provides advice to the Treasury Board on all matters relating to general administrative policy and organization in the Public Service of Canada, financial and asset management policies and procedures, review of annual and long-term expenditure plans and programs, and determination of related priorities.

d) Other Departments

In addition to the central agencies described above, there are two other departments that exercise certain central agency functions. The Department of Justice makes available legal services and advice to all Ministers and their departments. The Department of Foreign Affairs and International Trade provides government-wide coordination of activities and issues that involve foreign policy.

IV.2. The Prime Minister's Office

The Prime Minister's Office consists of the Prime Minister's political staff. The Office serves the Prime Minister and is fully accountable to him or her.

The Prime Minister's Office supports the Prime Minister in exercising his or her duties as head of government, leader of a

political party and Member of Parliament. The political staff in the Prime Minister's Office provide advice on policy development and appointments, discuss House of Commons proceedings with him or her, and facilitate the Prime Minister's relations with Ministers, the caucus and the party as a whole. In addition, the Prime Minister's Office schedules the Prime Minister's time, organizes his or her public statements and relations with the media, and handles his or her correspondence.

In general, the Prime Minister's Office plays an important role in enabling the Prime Minister to guide the political strategy of the government and is the central point of communication and coordination with Ministers, Parliamentary Secretaries and Members of Parliament. It also works closely with the Privy Council Office. Together, these two organizations provide advice and support from different perspectives on the issues of daily concern to the Prime Minister.

IV.3. Federal-Provincial-Territorial Relations and Regional Coordination

The Prime Minister is responsible for the overall management of federal-provincial-territorial relations, since they touch on virtually all areas of the federal government's activities. The Prime Minister is assisted by the Minister of Intergovernmental Affairs in coordinating intergovernmental relations. The Privy Council Office is the Public Service department that advises and assists the Prime Minister and the Minister in carrying out their responsibilities related to intergovernmental affairs.

In general, the Prime Minister expects each Minister to be responsible for the federal-provincial-territorial aspects of policies and programs within his or her own portfolio, and to ensure coordination with other intergovernmental initiatives.

The Prime Minister may also designate *Regional Ministers* for each province or major area, who play an important role in coordinating regional or provincial issues with the federal government's activities. However, the administration of departmental programs in every region remains the individual responsibility of departmental Ministers.

IV.4. Appointments

Governor in Council appointments are made to a wide range of positions, from deputy ministers and heads of agencies to chief executive officers and directors of Crown corporations. Many of these positions are very demanding, requiring extensive work and difficult decisions. It is essential for appointees to be well qualified, and senior government appointments must be chosen through a process that ensures broad and open consideration of proposed candidates. The government will establish a Public Appointments Commission to ensure that competitions for posts are widely publicized and fairly conducted.

By legislation or under Standing Orders of the House of Commons, some appointments—including those of Agents of Parliament—are subject to parliamentary review and resolution prior to being made final. Under government policy, appointments to key positions, including chairpersons and heads of Crown corporations and heads of agencies, are also subject to prior parliamentary review. In addition, other Governor in Council appointments (except judicial positions) are tabled in the House of Commons after each appointment is made in order to give the appropriate standing committee the opportunity to call the appointee and examine his or her qualifications.

The appointment process for Supreme Court of Canada judges includes extensive consultation (including Chief Justices, the provinces and the legal community) and assessment of candidates by an advisory committee (including nominees of the recognized parties, the provinces and the legal community).

IV.5. Communications and Public Announcements

Communicating with the public is an important responsibility of the government. Communications must be timely and clear. All government communications must therefore be coordinated to ensure they are consistent with overall government objectives and decisions, including Treasury Board policies.

The communications implications of an announcement are among the issues considered by the Cabinet when it decides on a policy. The content and timing of each public statement of a policy or the announcement of some government action (including appointments, new programs, or financial commitments and agreements) are coordinated by the responsible Minister, acting with the Minister's office and department, the Prime Minister's Office and the Privy Council Office.

The Prime Minister expects Ministers to consult as well with Regional Ministers and affected caucus members on impending announcements and to work with their own deputy ministers.

V

Standards of Conduct

Full accountability to Canadians is a central objective of our government. The Prime Minister holds Ministers to the highest standards of conduct for all their actions, including those that are not directly related to their official functions. Ministers are therefore expected to adhere to the following standards in all circumstances, whether they are acting as a Minister, a member of the House of Commons, a Senator or a private citizen. This chapter outlines key areas where established government standards of conduct apply to Ministers.

Moreover, as the government has committed to introduce additional mechanisms of accountability, the Prime Minister expects Ministers to conduct themselves not only in strict conformity with the rules as they currently stand, but also with regard to the spirit and intent of the measures that the government has committed to introduce.

V.1. Ministerial Conduct

Ministers must act with honesty and must uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of government are maintained and enhanced. Ministers, in particular, have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny. This obligation is not fully discharged merely by acting within the law.

V.2. Conflict of Interest

Ministers and persons working on their behalf are subject to the requirements of the *Conflict of Interest and Post-Employment Code for Public Office Holders.*[7] Ministers are also subject to the *Conflict of Interest Code for Members of the House of Commons* in their capacity as members of the House of

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[7] Available from the Ethics Commissioner, deputy ministers or the Privy Council Office.

Commons. The Ethics Commissioner is responsible for administering both Codes, investigating allegations against Ministers and other senior officials involving conflicts of interest, applying compliance measures and briefing Ministers on their responsibilities under the Codes. The obligations of the *Conflict of Interest and Post-Employment Code for Public Office Holders* apply to Ministers, their exempt staff and Parliamentary Secretaries as well as Governor in Council appointees, and some provisions apply to their families. The Code does not apply to other Senators or Members of Parliament.

Ministers are held accountable by the Prime Minister for their adherence to the provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders.* In general, the Code addresses basic principles of conduct. In addition, the Code:

- requires Ministers to provide a *confidential report* to the Ethics Commissioner on their assets and liabilities, their former and current activities and those of their spouse and dependent children;

- outlines *rules* regarding which assets may or may not continue to be directly managed, and gives direction on how to divest of assets;

- sets *limitations* on outside activities, acceptance of gifts, invitations to special events and hospitality, and post-employment activities; and

- sets out a *recusal mechanism* to assist Ministers in avoiding conflicts of interest in the performance of their official duties and functions.

Ministers' adherence to the provisions of the *Conflict of Interest and Post-Employment Code for Public Office Holders* is essential to enhancing confidence in our system of government.

Ministers are also held accountable by the House of Commons (or in the case of Ministers who are Senators, by the Senate) for their adherence to the provisions of the *Conflict of Interest Code for Members of the House of Commons* (or any similar rules established by the Senate) in their capacity as Members of Parliament.

V.3. Relations with the Judiciary and Other Government Agencies

As Members of Parliament, Ministers have responsibilities to their constituents. However, there are limitations on their ability to act on behalf of constituents or others, including themselves, when dealing with certain government agencies.

The Prime Minister expects Ministers and their staff not to intervene, or appear to intervene, on behalf of anyone, including constituents, with the *judiciary* concerning any matter before the courts. The Minister of Justice can provide detailed information on relations with the judiciary.

Ministers and their staff are also expected not to intervene, or appear to intervene, on behalf of anyone, including constituents, with *federal quasi-judicial tribunals* on any matter before them that requires a decision in their quasi-judicial capacity, unless otherwise authorized by law.[8] Ministers are therefore responsible for ensuring that they and their staff understand and respect the need for non-interference and an arm's-length relationship with these organizations.

While Ministers need to be in contact with the agencies within their own portfolios on a broad range of matters, governing statutes give some bodies such as Crown corporations a degree of independence from ministerial direction. A Minister's degree of control and responsibility for these organizations is defined in the Act that establishes them. Ministers need to know both the details of their responsibilities and the limits of their powers for these organizations. They must also understand and respect their arm's-length relationship with them.[9]

In matters regarding another Minister's portfolio, a Cabinet convention precludes a Minister from speaking about or otherwise becoming involved in a colleague's portfolio without first gaining the colleague's approval. This does not preclude the Minister from speaking directly to the Minister responsible. Nor does it prevent the Minister's staff from raising the concerns of constituents either with the staff of the Minister or through

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[8]See Annex E for additional information on dealings with quasi-judicial tribunals.

[9]See Annex F for additional guidance on Crown corporations.

channels in the departments or agencies that are specifically intended for dealing with matters of constituents.

There are situations when the office of a Minister can expect requests for assistance from other members of the Ministry on behalf of their constituents. When such an intervention with an agency is not appropriate because the request concerns a quasi-judicial matter, the office should indicate that an intervention is not possible by any Minister and suggest that the constituent deal directly with the agency.

However, Ministers and their staff may seek information that is available to the public. Guidance can be obtained from the Ethics Commissioner, who provides detailed briefings on this subject to Ministers, their Chiefs of Staff and other members of their staff, including those dealing with constituency issues.

V.4. Invitations

Ministers often receive invitations to participate in or endorse events, community initiatives or publications, to meet with people or to travel to various countries. Ministers must be aware that some invitations may come from individuals or groups who have links to terrorism, crime, or violent or unsavoury foreign regimes.

Ministers are expected to exercise discretion at all times. They are responsible for ensuring the *bona fides* of those with whom they have dealings. When there is any doubt about accepting an invitation, inquiries should be directed to the Director of Security Operations in the Privy Council Office. The Director will make inquiries, offer general advice to the Minister and arrange briefings as necessary.

VI

Administrative Matters

Ministers have direct administrative responsibilities flowing from their ministerial duties. This chapter provides information on administrative matters concerning Ministers and their offices. Detailed requirements are also set out in Treasury Board Secretariat's *Guidelines for Ministers' Offices.*

VI.1. Ministers' Offices and Exempt Staff

Ministers are personally responsible for the conduct and operation of their office. They hire their own office staff, who are known as "political" or "exempt" staff. The staff are outside the official Public Service and are exempt from Public Service Commission staffing and other controls. They are nevertheless subject to a broad range of terms and conditions set by the Treasury Board for the government as a whole.

The purpose of establishing a Minister's office is to provide Ministers with advisers and assistants who are not departmental public servants, who share their political commitment, and who can complement the professional, expert and non-partisan advice and support of the Public Service. Consequently, they contribute a particular expertise or point of view that the Public Service cannot provide. The exempt staff do not have the authority to give direction to public servants, but they can ask for information or transmit the Minister's instructions, normally through the deputy minister.

Good working relations between the Minister's office and the department, characterized by mutual respect, cooperation, and the sharing of information where it is relevant or needed for their respective work, are essential in assisting the Minister and deputy minister in managing departmental work. Such a relationship requires that exempt staff in the Minister's office respect the non-partisanship of public servants and not seek to engage them in work that is outside their appropriate role.

In meeting their responsibility to respect the non-partisanship of public servants, exempt staff have an obligation to inform themselves about the appropriate parameters of Public

Service conduct, including Public Service values and ethics, and to actively assess their own conduct and any requests they make to departmental officials in the light of those parameters. Ministers and deputy ministers should be vigilant in ensuring that the appropriate parameters of interaction between officials and exempt staff are observed.

To the extent practicable, relations between officials and exempt staff should be conducted through the deputy minister's office. The deputy minister's office should be informed about contact between exempt staff and public servants in the department.

A Minister's office may also include a limited number of Public Service *departmental assistants*. Departmental staff are public servants in the employ of their departments who are assigned to the Minister's office and who are expected to carry out their duties in a non-partisan manner. Their role is to liaise with the department as well as to provide administrative support and general assistance to the Minister on departmental or other government matters.

As Members of Parliament, Ministers receive other support provided by the House of Commons or the Senate. Such support is provided and used only in accordance with established House of Commons and Senate rules.

VI.2. Security

The Prime Minister holds Ministers personally accountable for the security of their staff and offices, as well as of "Confidences of the Queen's Privy Council for Canada" (commonly referred to as Cabinet confidences) and other sensitive information in their custody. The Privy Council Office briefs Ministers on applicable security requirements.

Confidences of the Queen's Privy Council for Canada are defined in section 69 of the *Access to Information Act* and section 70 of the *Privacy Act*. They include Cabinet documents and other information related to Cabinet decision making.

Deputy ministers are accountable to their Ministers for the security of departmental personnel, information, facilities and other assets. All individuals who work in or for Ministers' offices (e.g., employees, contractors, students and persons on loan, assignment or secondment), irrespective of their work location, require Level 2-Secret security clearances, as a minimum, *prior to*

appointment. They must also comply with other security requirements for the safeguarding of government information and assets. Clearances and security briefings are arranged by the deputy minister.

The Royal Canadian Mounted Police (RCMP) provide material to Ministers on security precautions they can take to ensure their safety. A 24-hour, 7-day emergency contact number is provided to Ministers by the RCMP. In the case of a specific threat, the RCMP can offer additional assistance (e.g., could include driver, vehicle and bodyguard).

Ministers are required to notify their deputy minister immediately of any potential compromise of Cabinet confidences or other security incident. Deputy ministers or the Clerk of the Privy Council can provide Ministers with further information on security matters.

VI.3. Cabinet, Institutional and Personal Records

Records kept in the offices of Ministers must be broken down into four categories: Cabinet documents, institutional records, ministerial records, and personal and political records.[10] Records in these categories are filed separately, for reasons of operating efficiency and confidentiality and to facilitate compliance with statutory requirements. Each category of documents may be subject to different provisions and treatment under some of the relevant laws, such as the *Access to Information Act*, the *Privacy Act*, the *Security of Information Act*, the *Canada Evidence Act* and the *National Archives Act*.

Ministers are expected to ensure that the provisions for handling the four categories of records are met. For the most part, however, Ministers delegate this responsibility, relying on their staff to manage and control the documents. Deputy ministers and Library and Archives Canada can provide advice on the procedures.

VI.4. Public Access to Information and Privacy

The *Access to Information Act* provides a right of public access to information in records under the control of government

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[10] Annex D provides a detailed description of the four categories of documents.

institutions, subject only to certain necessary exceptions limited and specified in law. Ministers, their deputy ministers and heads of agencies are ultimately responsible for the application of the Act in their respective institutions and within the overall ministerial portfolio. Under the Act, decisions can be reviewed by the Information Commissioner and, ultimately, by the Federal Court.

Ministers are expected to operate entirely in accordance with the letter and the spirit of the law when dealing with requests from the public for information. Ministers are responsible for ensuring that necessary actions are taken with respect to departments meeting deadlines and consulting other departments.

The *Privacy Act* imposes conditions that protect personal information held by government institutions. Under the Act, decisions can be reviewed by the Privacy Commissioner and, ultimately, by the Federal Court. In accordance with the legislation, Ministers may delegate these matters to their deputy minister or other senior officials, but may wish to be advised of particularly important files.

The *Access to Information Act* and the *Privacy Act* do not apply to Confidences of the Queen's Privy Council for Canada. However, a decision of the Federal Court of Appeal has made accessible, subject to exemptions in the Acts, background explanations, analysis of problems or policy options contained in Cabinet documents once a Cabinet decision has been made public, or, if the decision has not been made public, four years after the decision was made. Government policy requires that government institutions consult with the Privy Council Office in all instances where information that may qualify as a Cabinet Confidence has been identified in response to a request under the Act.

When producing *papers in Parliament*, Ministers are expected to ensure that requests for information (for example, in response to a Notice of Motion) are met. Matters related to the production of papers in Parliament are coordinated with the Leader of the Government in the House of Commons.

VI.5. Financial and Resource Management

Ministers' expenditures are subject to statutory and Treasury Board policies governing the use of public moneys. These conditions are set out in Treasury Board Secretariat's

Guidelines for Ministers' Offices, and cover matters such as:

- security clearance requirements;
- exempt staff and hiring by contract;
- salary rates and employee benefits;
- departmental staff assigned to Ministers' offices;
- contracting policies and procedures;
- budgets, expenditure authorization, and accounting for expenditures charged to Ministers' budgets;
- office accommodation and supplies; and
- travel and use of government aircraft and ministerial vehicles.

Ministerial responsibilities include ensuring that all expenditures in Ministers' offices are properly and prudently managed and are related to the conduct of official business. Deputy ministers and the Treasury Board Secretariat can provide further information.

Expenditures by Ministers and Parliamentary Secretaries are subject to scrutiny by Parliament. Ministers, Ministers' exempt staff and Parliamentary Secretaries are required to disclose publicly, by posting on their departmental Web-sites, all hospitality and travel expenses incurred during program-related business. Reports cover the financial quarter, and are posted on departmental Web-sites within 30 calendar days following the last day of the quarter. Ministers should be aware that high standards are expected of them. This policy also applies to Parliamentary Secretaries, and to deputy ministers and other senior government officials.

VI.6. Ministerial Travel Coordination

All proposed ministerial travel is coordinated with the Prime Minister's Office well in advance and before making commitments. Ministers are also expected to consult the Leader of the Government in the House of Commons or the Chief Government Whip and to ensure the availability of acting Ministers. When making use of government aircraft, Ministers

should make every effort to ensure joint travel in the interests of efficient use of government resources. However, for security purposes, no more than eight Ministers of the Crown may travel on the same aircraft at the same time.

Generally speaking, Ministers should limit travel abroad, especially while Parliament is in session. They should inform their deputy minister and the Royal Canadian Mounted Police of their travel plans in order to be advised of any particular security concerns and suggested protection measures. The actual arrangements for official foreign travel are coordinated by the Department of Foreign Affairs and International Trade.

Ministers planning *private travel abroad* also need to inform the Minister of Foreign Affairs well in advance, since security or policy considerations may be involved. All goods acquired by Ministers abroad are subject to normal customs requirements and examination, and must be declared on arrival.

Ministers must not accept travel on non-commercial chartered or private aircraft for any purpose except in exceptional circumstances, and only with the prior approval of the Ethics Commissioner and public disclosure of the use of such aircraft. Any hospitality accepted must strictly adhere to the requirements of the *Conflict of Interest and Post-Employment Code for Public Office Holders.*

VI.7. Foreign Honours

Long-standing government policy requires Ministers not to seek the offer of, nor to accept, a foreign order or decoration, either personally or on behalf of a colleague.

Annex A

Federal Government Institutions: The Executive

Canada is a constitutional monarchy and a democracy with a system of responsible parliamentary government based on the British Westminster model. As such, the structures and conduct of executive authority are governed both by Canada's "written" constitution (the *Constitution Acts, 1867-1982*) and by an "unwritten" constitution composed of conventions and customs that have been established and have evolved over the history of responsible government in Canada.

The unwritten constitution establishes key elements of Canadian democracy regarding executive authority in government as exercised by the Prime Minister and the Cabinet, who are responsible to the House of Commons, which is made up of the elected representatives of the people of Canada. This Annex outlines the basic roles and responsibilities of executive authority in that system.

A.1. The Crown, the Governor General and the Queen's Privy Council for Canada

In formal terms, executive government in Canada is vested by the *Constitution Act, 1867* in the Queen of Canada, who is the head of state. The Governor General is the representative of the Queen, and exercises the power and functions of the Crown on her behalf.

In Canada's democratic system of government, the Governor General is almost always bound to act only on the advice of the elected representatives who belong to the party that has the confidence of the House of Commons. Advice is offered directly by the Prime Minister on some matters, or is provided formally by the Ministry or government as a whole. It is the personal prerogative of the Prime Minister to convey the view of the government to the Governor General. The Governor General's consent must be obtained, when required, *before* decisions can take legal effect or be announced.

In constitutional terms, the chief advisory body to the sovereign is the Queen's Privy Council for Canada,[11] composed of all those sworn in as Privy Councillors. It is exceedingly rare for the full Privy Council to meet as a body and, even then, it does so only for ceremonial purposes.

A.2. The Prime Minister's Functions and Powers

The Prime Minister, as the leader of the political party that has the confidence of the House of Commons (usually by holding a majority of the seats), is commissioned by the Governor General to form a government.

The Prime Minister is, above all, responsible for organizing the Cabinet and for providing the direction necessary to maintain the unity of the Ministry. This unity is essential if the government is to retain the confidence of the House of Commons.

The following principal functions and exclusive powers of the Prime Minister are essential in making Cabinet government work:

- The Prime Minister leads *the process of setting the general direction of government policy.* The Prime Minister is responsible for arranging and managing the processes that determine how decisions in government are made, and for reconciling differences among Ministers. The Prime Minister establishes the government's position before Parliament by recommending to the Governor General the summoning and dissolution of Parliament, by preparing the Speech from the Throne outlining the broad policy agenda for each new parliamentary session and by determining whether proposed government legislation approved by the Cabinet is subsequently put before Parliament. The Prime Minister approves the Budget presented by the Minister of Finance.

- The Prime Minister *chooses the principal holders of public office.* The Prime Minister selects Ministers and may ask for their resignation at any time. The

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[11] This institution differs from the Privy Council Office, which is a department in the Public Service.

Prime Minister also recommends *senior public sector appointments* to the Governor General. The government will establish a Public Appointments Commission to ensure that competitions for posts are widely publicized and fairly conducted.

- The Prime Minister decides on *the organization, procedures and composition of the Cabinet.* This includes establishing Cabinet committees, selecting their membership and convening the Cabinet itself. In practical terms, the Prime Minister forms a team, decides on the process for collective decision making, and builds and adapts the machinery of government in which the team will operate.

- The Prime Minister determines *the broad organization and structure of the government* in order to meet its objectives. The Prime Minister is responsible for allocating Ministers' portfolios, establishing their mandates, clarifying the relationships among them and identifying the priorities for their portfolios through mandate letters. The Prime Minister's approval is required for the creation of new institutions and the elimination of existing organizations, some of which may also be subject to parliamentary decisions. Any proposals made by Ministers for significant organizational change or for altering their own mandates or those of other Ministers must first be approved by the Prime Minister.

- The Prime Minister has the overall responsibility for the government's relations with Parliament and the Sovereign.

- The Prime Minister establishes *standards of conduct* for Ministers.

- As head of government, the Prime Minister has *special responsibilities* for national security, federal-provincial-territorial relations and the conduct of international affairs. The Prime Minister may also take a special interest in any other area of a portfolio responsibility as circumstances require. Ministers should pay special attention to activities within their own portfolio that touch on

these special responsibilities or otherwise involve the Prime Minister.

A.3. The Ministry, the Cabinet and the Governor in Council

Cabinet is composed of all members of the Ministry. Members of the Ministry are appointed by the Governor General on the Prime Minister's recommendation. Before taking up their responsibilities, they are sworn in as Privy Councillors by the Clerk of the Privy Council at a ceremony presided over by the Governor General. In this ceremony, Privy Councillors swear the oath of allegiance, the Privy Councillor's oath and the oath of office for their respective portfolio. The Privy Councillor's oath includes the undertaking to maintain Cabinet secrecy. Privy Councillors are entitled to be styled "The Honourable" and to use the initials "P.C." after their names for life.

Unlike the Privy Council, the Cabinet has no standing in statute. In practice, the Cabinet is the fundamental and final forum for reaching a politically authoritative consensus on government issues under the Prime Minister's leadership.

The *Governor in Council* is the term for the Cabinet acting in a legal capacity. Formally, it is the Governor General acting on the advice of the Cabinet. Parliament does not assign powers to the Cabinet or to Ministers collectively, but rather to the Governor in Council.

A.4. Ministers and the Law

Legal requirements form part of the framework that establishes daily practices and sets parameters on how decisions are made in government. Whether acting individually or collectively, the Prime Minister and Ministers act pursuant to parliamentary authority and within limits laid down by Parliament. All government activity must take place in accordance with the law. Ministers having any doubts on the legality of a particular action should ask their deputy minister and obtain the view of the Department of Justice. The following key constitutional provisions or statutes impact on decisions and their implementation:

- The *Constitution Act, 1867*, formerly called the *British North America Act, 1867*.

- The *Constitution Act, 1982,* which includes the *Canadian Charter of Rights and Freedoms.*

- *Acts of Parliament* (principally departmental Acts) create the offices and responsibilities of Ministers, establish the departments over which they preside, and provide a basic framework of powers, duties and functions for which Ministers are accountable.

- The *Public Service Employment Act* establishes a continuing, professional and non-partisan Public Service of Canada.

- The *Financial Administration Act* shapes virtually all aspects of government management through the powers it grants to the Treasury Board to oversee departments and other organizations. The Treasury Board is the Cabinet committee responsible for managing the Public Service of Canada and for approving expenditures of departments and agencies. Many of its decisions have the force of law, limiting Ministers' discretion to manage and direct their departments.

- The *Access to Information Act* establishes a public right to access general information contained in government documents. Under its provisions, the government may withhold material only if disclosing the information could adversely affect the public interest. The *Privacy Act* protects personal information held by the government from unauthorized disclosure.

- Other important Acts include the *Official Languages Act,* the *Canadian Human Rights Act* and the federal *Employment Equity Act.*

Annex B

Cabinet Decision Making

The Cabinet is the political forum where Ministers reach a consensus and decide on issues. It is the setting in which they bring political and strategic considerations to bear on proposed ministerial and governmental actions. These considerations must necessarily reflect the views and concerns expressed by Canadians, caucus colleagues, and other Parliamentarians. Once a consensus is reached, Ministers can fulfill their collective responsibility to Parliament. This Annex addresses the main elements of the organization and conduct of decision making in the Cabinet.

B.1. Basic Rules for Cabinet Business

A number of basic ground rules for the conduct of Cabinet business are essential to maintain Cabinet solidarity and enhance its practical effectiveness.

Decision making is *led* by the Prime Minister. Through the Cabinet and its committees, the Prime Minister provides Ministers with the principal forum in which they can resolve different perspectives. The Prime Minister *organizes* Cabinet and Cabinet committee decision making, determines the agenda for Cabinet business and chooses committee chairpersons to act on his or her behalf. The Privy Council Office is the Cabinet's secretariat and administers the Cabinet decision-making process on behalf of the Prime Minister.

Cabinet government works through a process of compromise and consensus building, which culminates in a Cabinet decision. The Cabinet and Cabinet committees do not vote on issues before them. Rather, the Prime Minister (or committee chairperson) "calls" for the consensus after Ministers have expressed their views. As the Cabinet secretariat, the Privy Council Office records and communicates the decision.

Consultation among the Ministers, departments and portfolios involved *must precede* the submission of a proposal to the Cabinet by the responsible Minister or Ministers. Ministerial

discussions in the Cabinet or Cabinet committee focus on the decisions required and provide Ministers with an opportunity to participate in and influence those decisions.

Ministers have the right to seek their colleagues' consideration of proposals for government action in their area of responsibility. This is, of course, subject to the agenda set by the Prime Minister for government priorities. Cabinet committee agendas are set by the committee chairpersons acting on the Prime Minister's behalf.

Confidences of the Queen's Privy Council for Canada, more commonly referred to as "Cabinet confidences," must be appropriately safeguarded from unauthorized disclosure or other compromise. The Cabinet's collective decision-making process has traditionally been protected by the rule of confidentiality, which enhances Cabinet solidarity and collective ministerial responsibility. Confidentiality ensures that Ministers can frankly express their views before a final decision is made. The Prime Minister expects Ministers to announce policies only after Cabinet decisions are taken, in consultation with the Prime Minister's Office and the Privy Council Office.

Cabinet business is extensive, and Cabinet consensus at times is difficult to achieve. Given the limited time available to Ministers and given the importance of clear decisions to government operations, Cabinet business must be conducted efficiently and according to accepted ground rules that are fully understood and respected. Cabinet discussion is not used to air introductory or preliminary discussions of issues. Deputy ministers are expected to ensure that other affected departments are adequately informed in advance and that coordination across portfolios is pursued so that other Ministers are prepared for Cabinet discussion and government decisions are coherent and aligned with overall objectives. When departments directly involved differ on a matter, the dispute should not be referred to the Cabinet until all other means of resolving it have been exhausted.

B.2. Decision-Making Process and Procedures

a) The Policy and Fiscal Frameworks

Cabinet decision making is steered by certain key statements of government policy and priorities as well as by electoral commitments. The Speech from the Throne, delivered

by the Governor General at the beginning of each session of Parliament, outlines the government's program for Parliament. As a reflection of the overall priorities of the government and the Prime Minister, the Speech provides a general *policy framework* for the upcoming parliamentary session.

The Minister of Finance presents the government's annual Budget which reflects the *fiscal framework* agreed to by the Cabinet. The President of the Treasury Board subsequently tables the Main Estimates.

These frameworks provide for the overall direction of the government. They both shape and reflect the ongoing work of Cabinet committees.

b) The Process

The Cabinet process begins when an issue is raised by a Minister in the form of a Cabinet document or through general discussion at a meeting. The supporting documents are normally circulated to all Ministers by the Privy Council Office before the issue is discussed at the appropriate Cabinet committee. As well, Ministers may take the opportunity to update their colleagues on the progress of certain key initiatives being developed or implemented in their departments.

The Cabinet committee's report is subject to confirmation by the Cabinet. Records of final decisions are circulated to all Ministers and their deputy ministers for action under Ministers' individual authority. *Policy announcements are made after a Cabinet decision and after the Treasury Board's approval of any resources required to implement the decision.*

B.3. Legislative Program

The content of the government's legislative program is ultimately the responsibility of the Prime Minister, assisted by the Government House and Senate Leaders. The main thrusts of the program are determined by the Cabinet. The Leader of the Government in the House of Commons coordinates the process of translating the Cabinet's policy decisions into bills to be placed before the House of Commons.

The first stage in this process is Cabinet approval of a Minister's policy proposal. After Cabinet has approved a Minister's policy proposal, a bill is then drafted by the Department of Justice

to reflect the Cabinet decision. Priorities in drafting are established by the Leader of the Government in the House of Commons, who also undertakes final scrutiny of a bill before it is approved by the Cabinet for introduction in Parliament on his or her recommendation.[12] The Leader of the Government in the House of Commons has flexibility in establishing priorities for consideration of bills by the House, although Cabinet discussions of House business provide the overall direction for the government's legislative program. The Leader of the Government in the House of Commons is supported in this regard by his or her own exempt staff, the Privy Council Office, and the Deputy House Leader and Chief Government Whip.

B.4. The Cabinet and Cabinet Committees

Cabinet committees are an extension of the Cabinet itself. The Prime Minister establishes both standing and temporary (or special purpose) committees, chooses their membership, prescribes their procedures and changes them as he or she sees fit. The Privy Council Office provides Ministers with information on the Prime Minister's decisions regarding the structure and operations of Cabinet committees.

Currently, most collective ministerial deliberations take place in Cabinet committees. Committee chairpersons act for the Prime Minister with his or her authority, including setting the committee agenda. For the most part, decisions are taken by the appropriate committee, subject to confirmation by the Cabinet. This system settles as many questions as possible at the committee stage in order to lessen the workload of the Cabinet and to allow it to concentrate on priority issues and broad political concerns.

The Treasury Board is established by law as a committee of the Queen's Privy Council for Canada, and many of its decisions have force of law. It provides oversight of the government's financial management and spending, as well as oversight on human resources issues. The Treasury Board may act as the Cabinet committee for the Public Service and expenditure management (under the *Financial Administration Act*). The Board is the employer for the Public Service, and establishes policies and

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[12] See *Cabinet Directive on Law Making*, available from the Privy Council Office.

common standards for administrative, personnel, financial and organizational practices across government. It also controls the allocation of financial resources to departments and programs. The Treasury Board also fulfills the role of the Special Committee of Council (SCC) in approving regulatory policies and regulations, and all Orders in Council, excluding appointments.

Ministers may be invited by the committee chair to attend any meeting of a Cabinet committee, whether or not they are a member of the committee. The Prime Minister designates certain Ministers as ongoing members of each committee, and they are expected to attend these regularly. If Ministers are not able to attend a meeting, they should inform the chair of their views on agenda items by letter.

Meetings are conducted as informally as possible in both official languages. Most Cabinet committees meet on a regular schedule. This allows for effective planning and ensures that meetings and decisions can proceed without delay. As the Cabinet secretariat, the Privy Council Office provides the Cabinet and its committees with the support required to prepare for and conduct meetings, including arranging meetings, circulating agendas, distributing documents, providing advice to the chairperson of each committee on agenda items and recording Cabinet minutes and decisions.

B.5. Orders in Council

Some actions of the executive require a more formal process. Orders in Council are legal instruments made by the Governor in Council pursuant to statutory authority (or, infrequently, royal prerogative). Recommendations to the Governor in Council are signed by the responsible Minister. They take legal effect only when signed by the Governor General.

B.6. Financial Procedure

According to the Constitution, revenue can be raised and moneys can be spent or borrowed by the government only with the authority of Parliament. A money bill, for the raising or spending of revenue, must originate in the House of Commons, as the House is the custodian of the public purse. The *Constitution Act, 1867* also requires money bills to be recommended to the House by the Governor General in the form of a Royal Recommendation. This ensures executive control over revenue raising and spending initiatives, and is obtained by the Leader of

the Government in the House of Commons.

Parliament exercises its authority over government financial administration by means of a package of instruments comprising enabling legislation such as the *Appropriations Act*, financial documentation such as the Main Estimates (Parts I, II and III and the Public Accounts), and a review process by the House of Commons, the Senate and the Auditor General.[13]

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[13] For more details, see Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, House of Commons, Ottawa, 2000, chap. 18.

Annex C

Appointments

The government will establish a Public Appointments Commission to ensure that competitions for posts are widely publicized and fairly conducted.

The Prime Minister has the following key responsibilities regarding appointments:

- All appointment recommendations are *subject to the Prime Minister's approval* before they go forward to the Governor in Council.

- *Remuneration* for most Governor in Council appointments, both full-time and part-time, is set or approved by the Governor in Council on the recommendation of the Prime Minister. On this matter, the Prime Minister is supported by the Privy Council Office. Remuneration for some Governor in Council appointments is set by Crown corporations' by-laws or other means.

In addition, the following are important aspects of the appointment process:

- To open the process and identify candidates, vacancies for full-time, fixed-term Governor in Council positions are generally advertised in the *Canada Gazette*.

- Representational criteria, such as regional considerations, are taken into account when recommending appointments. Another relevant factor is employment equity, to better represent women, visible minorities, Aboriginal peoples and people with disabilities.

- Governor in Council appointees must meet the requirements of the *Conflict of Interest and Post-Employment Code for Public Office Holders*.

The Ethics Commissioner administers the Code and provides advice to office holders and potential appointees. Part-time appointees are subject to the principles of the Code.

- All Governor in Council appointees are subject to rigorous *background checks* prior to appointment.

- *Announcements* of appointments are coordinated by the Prime Minister's Office, after they have been given legal effect when signed by the Governor General.

- By legislation, under Standing Orders of the House of Commons and pursuant to Government policy, key appointments are subject to parliamentary review and resolution prior to being made final.

Annex D

Cabinet, Institutional and Personal Records

This Annex describes the four categories of ministerial papers and the access to document rules that apply to former Ministers.

Cabinet documents belong to the Prime Minister. Cabinet documents are formal records designated by the Privy Council Office as belonging to the Cabinet Paper System. They include Memoranda to Cabinet (MCs), decks, Cabinet Committee Reports (CRs), records of decisions (RDs), agendas, aides-mémoire and documents prepared for Ad Hoc Cabinet Committees or Reference Groups of Ministers. This category also includes formal Cabinet documents related to the Treasury Board and any sub-committees of Treasury Board, including submissions, précis, agendas, schedules, minutes of meetings and letters of decision.

The efficient operation of the Cabinet and the necessary confidentiality of ministerial discussions depend, in part, on the proper handling of Cabinet documents. Ministers must ensure that Cabinet documents provided to them are always safeguarded in accordance with the security requirements set by the Privy Council Office or, for Cabinet documents related to the Treasury Board, to the Treasury Board Secretariat. Parliamentary Secretaries must also respect this protocol when they are given access to such documents. Ministers must assign members of their staff with specific responsibility for controlling the flow and ensuring the security of these documents. When a Cabinet item has been dealt with, the associated Cabinet documents must be returned to the Privy Council Office or the Treasury Board Secretariat, as appropriate.

Certain Cabinet documents that are clearly marked for Ministers' eyes only cannot be reviewed by exempt staff. Some Cabinet documents must remain in the Cabinet room. Cabinet documents must not be photocopied, electronically scanned or sent by facsimile, and they must be carried in a secure briefcase. A record containing Cabinet confidences that is not a Cabinet document is either an institutional record (if it originated with the

institution), or a ministerial record (if it originated with the office of the Minister, e.g., a briefing note containing political advice to a Minister regarding a Cabinet matter).

Institutional Records relate to the business (policies, programs, activities and services) of the department and associated agencies, and are kept in a separate registry.

Ministerial records include official records pertaining to the office of the Minister, other than records that fall into the categories of personal or political records, institutional records or Cabinet documents.

Personal and political records are personal, as opposed to official, in nature (e.g., a Minister's constituency business, party political matters, private and personal life) and are kept in separate ministerial files. Like ministerial records, personal and political records are normally excluded from the application of the *Access to Information Act*, provided that they are maintained separately from institutional records.

When a Minister leaves office, Cabinet documents must be returned to the Privy Council Office or Treasury Board Secretariat, institutional records must be left with the department, and ministerial records must be transferred directly to Library and Archives Canada. Ministers may remove only their personal and political papers. However, to ensure the security of sensitive documents in personal and political papers, Ministers should use storage facilities and archival services offered by Library and Archives Canada.

Former Prime Ministers have control over the confidences of the government they headed. When a change of government occurs, the outgoing Prime Minister traditionally leaves the Cabinet records of the government in the custody of the Clerk of the Privy Council. The Clerk of the Privy Council plays a central role in administering the convention governing access to Cabinet and ministerial papers.

Subject to any arrangements a former Prime Minister may make with his or her successor, former Ministers may have access to Cabinet papers for the period of time when they held office, but only for that period, and only to papers relating to that office or to which they would normally have had access. Requests for access are addressed to the Clerk of the Privy Council and Secretary of the Cabinet or, for requests concerning Treasury

Board documents, to the Secretary of the Treasury Board. Cabinet papers to which access is provided may be read on the premises of the Privy Council Office or the Treasury Board Secretariat as appropriate.

Former Ministers may have access to ministerial records that are transferred to Library and Archives Canada on the premises of Library and Archives Canada. They may also have access to institutional records that were prepared in their departments during the period of time when they held office. For access to institutional records, they can contact the deputy minister and arrange to review them on departmental premises.

Former Ministers are bound for life to respect their oath as Privy Councillors, including maintaining the secrecy of Confidences of the Queen's Privy Council for Canada, and remain subject to the *Security of Information Act*. They must also honour their commitments to other Ministers and colleagues. When talking or writing about their experience in government, former Ministers must consult their former department's Access to Information Office to ensure that they do not disclose matters that remain confidential. Any questions should be addressed to the Clerk of the Privy Council.

Annex E

Dealings with Quasi-Judicial Tribunals

Basic Principle

Ministers shall not intervene, or appear to intervene, on behalf of any person or entity, with federal quasi-judicial tribunals on any matter before them that requires a decision in their quasi-judicial capacity, unless otherwise authorized by law.

Dealings with Quasi-Judicial Tribunals within the Portfolio

Ministers need to be in contact with agencies in their portfolio on a broad range of administrative, policy and regulatory matters when authorized to do so by legislation. For instance, the Minister may communicate with the chair of a tribunal on its budget.

Ministers and their deputies should work with the agencies in their portfolio to clarify mutually agreed limits on the information that may flow to and from each agency and the appropriate procedures for communication.

The Minister's office can expect requests for assistance from other Ministers on behalf of their constituents. Where such an intervention with an agency is not appropriate because the request concerns a quasi-judicial case, the Minister's office should indicate that an intervention is not possible by any Minister and suggest that the constituent deal directly with that agency.

Dealings with Quasi-Judicial Tribunals on Behalf of Constituents

There are limitations on the ability of a Minister to act on behalf of constituents as far as quasi-judicial bodies are concerned.

Ministers and their staff cannot intervene on behalf of any person or entity with a federal quasi-judicial agency on any matter before it that requires a decision in its quasi-judicial capacity.

By convention, a Minister should not speak about or otherwise become involved in a colleague's portfolio without first consulting the colleague and gaining his or her approval. The practice has evolved whereby Ministers and their offices do not deal directly with public servants, but go through the office of the responsible Minister.

However, Ministers and their staff may seek information on the status of a matter. Further, several departments have set out specific instructions on how Ministers' offices, usually in the constituency, can deal with inquiries regarding such matters as disability benefits, employment insurance, old age security, or citizenship and immigration.

Annex F

The Ministry and Crown Corporations Guidelines

The Minister who is the appropriate Minister for a Crown corporation must have dealings with the corporation on a variety of matters. While the precise responsibilities of a Minister with respect to a particular Crown corporation may vary with the governing statute, the Minister is in all cases ultimately accountable to Parliament for the overall effectiveness of the Crown corporation. Accordingly, the Minister has direct responsibility for such broad orientations as framework legislation and recommendation of appointments, as applicable; for review and approval of corporate plans; for assessing the ongoing relevance of the corporation's mandate and its effectiveness as a policy instrument; for providing broad policy direction to the corporation; and for dealing with appropriations and recommending these to Cabinet. These guidelines do not affect such dealings.

However, the Minister does not become involved in day-to-day operations of a Crown corporation, nor does his or her staff. Because of the wide range of activities carried out by individual Crown corporations, the appropriate role of the Minister must be determined on a case-by-case basis.

The following guidelines will assist Ministers in fulfilling their representative duties, while preserving the managerial autonomy of Crown corporations within their portfolio.

1. No Minister should personally promote the private interests of any individual, corporation or non-governmental organization, including a constituent, with any Crown corporation.

2. It is always appropriate for a Minister to raise the concerns of a constituent directly with the Minister responsible for a Crown corporation.

3. The staff of a Minister when dealing with constituency matters may, however, make representations to a Crown corporation.

4. The staff of the responsible Minister, because of their special responsibilities in support of their Minister, may not make representations, on behalf of a constituent, to any Crown corporation that falls within their Minister's portfolio of responsibilities.

5. It is recommended that the office of the Minister responsible for a Crown corporation establish a procedure, in cooperation with the corporation, to enable the Minister's office to pass on as a referral, for the corporation's appropriate action, representations or inquiries that the Minister or his or her office receives from parliamentarians, other Ministers or their offices, the Minister's own constituents or, more generally, the public. The Office of the Ethics Commissioner will work with Ministe"s offices and Crown corporations in establishing these procedures.

6. More broadly, these guidelines do not prevent any Minister or his or her political staff from social contact with the officers and staff of Crown corporations, nor from participating in briefing sessions initiated by the corporation.